

PUBLIC SANCTIONS

FY 2008

The following are public sanctions (reproduced in their entirety) which were issued by the Commission during fiscal year 2008. The public records for these cases are available for inspection at the Commission's offices located at 300 W. 15th Street, Suite 415, Austin, Texas.



BEFORE THE STATE COMMISSION ON JUDICIAL CONDUCT

CJC No. 07-0251-JP

PUBLIC ADMONITION

**HONORABLE BOB WALL
JUSTICE OF THE PEACE, PRECINCT 2, PLACE 1
BROWNWOOD, BROWN COUNTY, TEXAS**

During its meeting on October 18, 2007, the State Commission on Judicial Conduct concluded a review of allegations against the Honorable Bob Wall, Justice of the Peace for Precinct 2, Place 1, in Brownwood, Brown County, Texas. Judge Wall was advised by letter of the Commission's concerns and provided a written response. After considering the evidence before it, the Commission entered the following Findings and Conclusions:

FINDINGS OF FACT

1. At all times relevant hereto, the Honorable Bob Wall was Justice of the Peace for Precinct 2, Place 1, in Brownwood, Brown County, Texas.
2. On or about September 30, 2005, Judge Wall provided a sworn statement to a Texas Ranger concerning Brown County Precinct 1 Constable Donnie Barnum ("Barnum").

3. According to Judge Wall's statement, in late 2004, shortly after being appointed to the position of Brown County Constable, Barnum began filing traffic citations in Judge Wall's court.
4. Judge Wall contacted Barnum's supervisor and advised him that he would not accept any citations written by Barnum.
5. Judge Wall then met with Barnum personally. At that meeting, Judge Wall informed Barnum that he was dismissing the pending traffic cases that had been filed by Barnum and that he would no longer accept citations written by Barnum.
6. In his statement, Judge Wall explained that he refused to accept any citations written by Barnum because the judge felt strongly, based on personal experiences, that Barnum was not a credible person. Judge Wall explained that before becoming a judge, he and Barnum had worked together as deputy constables in Brown County.
7. On or about April 20, 2006, Judge Wall testified in Cause No. CR-18, 107, styled *The State of Texas vs. Donnie Barnum*, a removal proceeding pending before the 35th Judicial District Court in Brown County, Texas.
8. At the trial, Judge Wall testified that he did not think constables should be writing traffic citations; that he did not think Barnum should be issuing traffic citations in Precinct 2; and that he did not believe Barnum had the temperament or judgment to be a peace officer.
9. Judge Wall also testified that he told Barnum that neither he nor the County Attorney would prosecute citations filed in Precinct 2 that had been written by Barnum.
10. In his testimony before the court, Judge Wall acknowledged that he did not have the legal authority to tell a peace officer not to file a complaint or citation in his court.
11. Judge Wall added that he would continue to tell that peace officer not to file a citation in his precinct even if he did not have the legal authority to do so because it was "his precinct" and "his right" to voice his opinion about that officer.
12. Judge Wall further acknowledged that he had allowed his personal opinion of Barnum to affect his judicial conduct or judgment by not allowing Barnum to file citations in his court and by *sua sponte* dismissing traffic cases involving citations that had been written by Barnum.
13. Following the trial, Barnum was convicted of the offense of official oppression and removed from office.

RELEVANT STANDARDS

1. Canon 2A of the Texas Code of Judicial Conduct states, in pertinent part: "A judge shall comply with the law . . ."
2. Canon 2B of the Texas Code of Judicial Conduct states, in pertinent part: "A judge shall not allow any relationship to influence judicial conduct or judgment."

3. Canon 3B(1) of the Texas Code of Judicial Conduct states: “A judge shall hear and decide matters assigned to the judge except those in which disqualification is required or recusal is appropriate.”
4. Canon 3B(2) of the Texas Code of Judicial Conduct states, in pertinent part: “A judge . . . shall maintain professional competence in [the law].”
5. Canon 3B(5) of the Texas Code of Judicial Conduct states: “A judge shall perform judicial duties without bias or prejudice.”

CONCLUSION

The Commission concludes based on the facts and evidence before it that Judge Wall failed to comply with the law and demonstrated a lack of professional competence in the law by *sua sponte* dismissing traffic cases filed by Constable Barnum without a motion to dismiss from the prosecutor and by refusing to accept citations or complaints written by Constable Barnum in Precinct 2. Although Judge Wall may have had a valid concern about Barnum’s credibility as a witness, his prior relationship with Barnum and his personal opinion that Barnum lacked credibility, good judgment or the appropriate temperament for a peace officer raised legitimate questions as to the judge’s impartiality in cases where Barnum would be a witness. Rather than dismiss cases and refuse to accept filings, the appropriate remedy would have been for Judge Wall to recuse himself from those cases. Judge Wall’s actions in this matter constituted willful or persistent violations of Canons 2A, 2B, 3B(1), 3B(2) and 3B(5) of the Texas Code of Judicial Conduct.

In condemnation of the conduct described above that violated Canons 2A, 2B, 3B(1), 3B(2) and 3B(5) of the Texas Code of Judicial Conduct, it is the Commission’s decision to issue a **PUBLIC ADMONITION** to the Honorable Bob Wall, Justice of the Peace for Precinct 2, Place 1, in Brownwood, Brown County, Texas.

Pursuant to the authority contained in Article V, § 1-a(8) of the Texas Constitution, it is ordered that the actions described above be made the subject of a **PUBLIC ADMONITION** by the Commission.

The Commission has taken this action in a continuing effort to protect public confidence in the judicial system and to assist the state’s judiciary in its efforts to embody the principles and values set forth in the Texas Constitution and the Texas Code of Judicial Conduct.

Issued this 13th day of December, 2007.

ORIGINAL SIGNED BY

Honorable Sid Harle, Chair
State Commission on Judicial Conduct





**BEFORE THE
STATE COMMISSION ON JUDICIAL CONDUCT**

CJC No. 06-0707-JP

**PUBLIC ADMONITION
AND
ORDER OF ADDITIONAL EDUCATION**

**HONORABLE GREGORY MIDDENTS
JUSTICE OF THE PEACE, PRECINCT 1
SHERMAN, GRAYSON COUNTY, TEXAS**

During its meeting on February 13-15, 2008, the State Commission on Judicial Conduct concluded a review of allegations against the Honorable Gregory Middents, Justice of the Peace for Precinct 1, Sherman, Grayson County, Texas. Judge Middents was advised by letter of the Commission's concerns and provided a written response. Judge Middents appeared before the Commission on February 14, 2008, and gave testimony. After considering the evidence before it, the Commission entered the following Findings and Conclusions:

FINDINGS OF FACT

1. At all times relevant hereto, the Honorable Gregory Middents was Justice of the Peace for Precinct 1 in Sherman, Grayson County, Texas.
2. In May of 2005, Judge Middents signed an order holding a 17-year-old student in constructive contempt of court. He sent her to jail and fined her \$100.
3. In his constructive contempt order, Judge Middents stated that the student had violated "Orders of this Court" without identifying the specific order violated, nor did he state how long she was to be incarcerated or when her fine was due.
4. Although asked to do so, Judge Middents was unable to provide the Commission with any court documents showing that the student had been personally served with notice of a contempt hearing or that a summons, subpoena, or warrant had been issued to secure her appearance in court.

5. Although asked to do so, Judge Middents was unable to provide the Commission with any court documents reflecting that he issued show cause orders or equivalent legal process informing the student of when, how and by what means she was guilty of contempt.
6. Although asked to do so, Judge Middents was unable to provide the Commission with any court documents substantiating his testimony that he had advised the student of her right to be represented by counsel and that the student had waived her rights before he conducted the contempt hearing.
7. Although asked to do so, Judge Middents was unable to provide the Commission with any documentation or notation that a prosecutor was present at any of these proceedings, nor did he identify any testifying witnesses.
8. Judge Middents told the Commission that the student had appeared before him previously for failing to attend school.
9. Although asked to do so, Judge Middents was unable to provide the Commission with all of the court records relating to the student's case.
10. When asked if the student had been under the age of 17 at the time of her alleged offense, Judge Middents was unable to recall or provide court records supporting this fact.
11. According to the few court records that Judge Middents did provide to the Commission in response to this inquiry, several personal criticisms about the student had been noted by the judge on the court file.
12. In addition to the student's case, between 2003 and 2005, Judge Middents held several parents in constructive contempt of court, sending them to jail and fining them \$100 as well.
13. As was true in the student's case, Judge Middents' constructive contempt orders in the parents' cases did not identify specific court orders that they had violated, nor did the judge indicate how long the parents were to be incarcerated or when their fines were due.
14. As was true in the student's case, Judge Middents was asked to provide the Commission with court records relating to the parents' cases.
15. Judge Middents was unable to provide the Commission with court records showing that: the parents had been personally served with notice of their contempt hearings or that a summons, subpoena, or warrant was issued to secure their appearances in court; he issued show cause orders or equivalent legal process informing the parents of when, how and by what means they were guilty of contempt; he had advised the parents of their right to be represented by counsel and that they had waived their rights, before he conducted their contempt hearings; a prosecutor was present at any of these proceedings.
16. In his testimony before the Commission, Judge Middents was unable to provide the names of the children of the parents who had been held in contempt, nor was he able to recall whether the parents had been charged with thwarting their children's school attendance.

17. According to the few court records that Judge Middents did provide to the Commission in response to this inquiry, several personal criticisms about the parents had been noted by the judge on the court files.

RELEVANT STANDARDS

1. Canon 2A of the Texas Code of Judicial Conduct states: “A judge shall comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.”
2. Canon 3B(2) of the Texas Code of Judicial Conduct states, in pertinent part: “A judge . . . shall maintain professional competence in [the law].”

CONCLUSION

The Commission finds from the facts and evidence presented that Judge Middents improperly exercised his contempt authority by failing to provide the alleged contemnors with full and unambiguous notification of when, how and by what means they had been guilty of contempt. Judge Middents also failed to advise the alleged contemnors at the contempt hearing of their right to counsel, failed to admonish them about proceeding without counsel, and failed to obtain the defendants’ knowing and voluntary waiver of counsel before finding them in contempt and ordering their confinement in jail. Further, the judge failed to document court proceedings properly and wrote improper personal notes about the defendants in their public records. Finally, the judge did not determine if he had the legal authority to incarcerate a 17-year-old student for constructive contempt. The judge’s actions in failing to properly exercise his contempt authority constituted a serious and persistent failure to comply with the law, in violation of Canon 2A of the Texas Code of Judicial Conduct, and a fundamental lack of professional competence in the law, in violation of Canon 3B(2) of the Texas Code of Judicial Conduct.

In condemnation of the conduct described above that violated Canons 2A and 3B(2) of the Texas Code of Judicial Conduct, it is the Commission’s decision to issue a **PUBLIC ADMONITION AND ORDER OF ADDITIONAL EDUCATION** to the Honorable Gregory Middents, Justice of the Peace for Precinct 1 in Sherman, Grayson County, Texas.

Pursuant to the order, Judge Middents must obtain **eight (8) hours** of instruction with a mentor in addition to his required judicial education. In particular, the Commission directs that Judge Middents receive instruction as follows:

- Two (2) hours of additional training concerning the court’s contempt authority and proper procedures to be followed before finding a person in constructive contempt of court;
- Two (2) hours of additional training concerning a criminal defendant’s right to due process under the United States and Texas constitutions.

- Two (2) hours of additional training concerning §25.093 of the TEXAS EDUCATION CODE, “Parent Contributing to Nonattendance” (formerly titled “Thwarting Compulsory Attendance Law”); and
- Two (2) hours of additional training concerning both §25.094 of the TEXAS EDUCATION CODE, “Failure to Attend School,” and Art. 45.050 of the TEXAS CODE OF CRIMINAL PROCEDURE, “Failure to Pay Fine; Contempt: Juveniles.”

Judge Middents shall complete the additional **eight (8) hours** of instruction recited above within **ninety (90) days** from the date of written notification of the assignment of a mentor. It is Judge Middents’s responsibility to contact the assigned mentor and schedule the additional education.

Upon the completion of the **eight (8) hours** of instruction described herein, Judge Middents shall sign and return the Respondent Judge Survey indicating compliance with this Order. Failure to complete, or report the completion of, the required additional education in a timely manner may result in further Commission action.

Pursuant to the authority contained in Article V, §1-a(8) of the Texas Constitution, it is ordered that the actions described above be made the subject of a **PUBLIC ADMONITION AND ORDER OF ADDITIONAL EDUCATION** by the Commission.

The Commission has taken this action with the intent of assisting Judge Middents in his continued judicial service, as well as in a continuing effort to protect public confidence in the judicial system and to assist the state’s judiciary in its efforts to embody the principles and values set forth in the Texas Constitution and the Texas Code of Judicial Conduct.

Issued this __28th__ day of __February____, 2008.

ORIGINAL SIGNED BY

Honorable Sid Harle, Chair
State Commission on Judicial Conduct





**BEFORE THE
STATE COMMISSION ON JUDICIAL CONDUCT**

CJC Nos. 07-0327-MU & 07-0359-MU

PUBLIC ADMONITION

**HONORABLE ALLEN GILBERT
MUNICIPAL COURT JUDGE
SAN ANGELO, TOM GREEN COUNTY, TEXAS**

During its meeting on February 13-15, 2008, the State Commission on Judicial Conduct concluded a review of allegations against the Honorable Allen Gilbert, Municipal Court Judge, San Angelo, Tom Green County, Texas. Judge Gilbert was advised by letter of the Commission's concerns and provided a written response. Judge Gilbert appeared with counsel before the Commission on February 15, 2008, and gave testimony. After considering the evidence before it, the Commission entered the following Findings and Conclusions:

FINDINGS OF FACT

1. At all times relevant hereto, the Honorable Allen Gilbert was the Municipal Court Judge for the City of San Angelo, Tom Green County, Texas.
2. On the morning of November 8, 2006, Judge Gilbert, while reading the local newspaper, noted an advertisement for a local "gentleman's club" announcing the upcoming performance of an exotic dancer with a name very similar to that of the assistant city prosecutor assigned to his court.
3. Judge Gilbert shared the advertisement with several people employed by the city and over whom he had supervisory authority. Together, the judge and several city employees created their own flyer out of the advertisement in an effort to make a joke at the city prosecutor's expense.
4. The flyer consisted of a letter-sized copy of the original advertisement promoting the exotic dancer, along with the following captions added to the bottom of the page by Judge Gilbert's court staff involved in the prank: (1) "Let her take your

- law into her hands!” (2) “Let her handle your case!” and (3) “[She] wants to prosecute you!”
5. With Judge Gilbert’s tacit approval, several of these flyers were placed in public areas around the courthouse.
 6. That same morning, the city prosecutor saw the flyers as she arrived at the courthouse and began removing them from where they had been posted.
 7. According to the city prosecutor, when she inquired as to who was responsible for posting the flyers, Judge Gilbert told her that he had found the advertisement in the paper that morning and stated he “could not resist.”
 8. Following the meeting with the city prosecutor, Judge Gilbert carried an unknown number of the flyers to the headquarters of the San Angelo Police Department, where he posted at least one of the flyers on a door, and left a second one with a senior officer.
 9. The city prosecutor, having been told that the flyers had been posted at the police department, proceeded to that building where she observed Judge Gilbert as he was leaving.
 10. When the city prosecutor arrived at the police department, she found a dollar bill attached to one of the flyers, placed there by someone at the department, not Judge Gilbert. She removed the offending flyer.
 11. That afternoon, the city prosecutor accompanied Judge Gilbert and another court employee to Mertzon, Texas, where Judge Gilbert was to preside over the court docket for that city.
 12. Upon arriving in Mertzon, Judge Gilbert shared the story of the flyers with court personnel. Additionally, Judge Gilbert’s employee informed those present that an additional comment had been considered for the poster, to wit: “She wants to beat your case,” or words to that effect.
 13. On November 11, 2006, Judge Gilbert was placed on paid leave by the San Angelo City Council, pending an investigation into the incident.
 14. On December 5, 2006, the city council voted to suspend Judge Gilbert without pay for two weeks, finding that he had violated the city’s policy against sexual harassment and citing his “bad judgment” and “irresponsible behavior” in the matter.
 15. The incident described above received local media attention.

RELEVANT STANDARDS

1. Canon 2A of the Texas Code of Judicial Conduct states: “A judge shall comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.”
2. Canon 3B(4) of the Texas Code of Judicial Conduct states, in pertinent part, “A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity . . .”

CONCLUSION

The Commission concludes based on the facts and evidence before it that Judge Gilbert failed to comply with the law when he violated the city's policy against sexual harassment by either creating or allowing his court staff to create and post the offending flyers in public areas in and around the courthouse, where he knew the city prosecutor and her colleagues would observe them. The Commission further finds that Judge Gilbert's treatment of the city prosecutor, an attorney who regularly appeared in his courtroom, demonstrated more than a mere lapse of judgment. As a public official charged with upholding the honor and integrity of the judiciary, Judge Gilbert knew or should have known that his behavior was irresponsible, lacked dignity, and would be perceived as offensive, disrespectful, and discourteous to the attorney and others. In light of this, the Commission finds that Judge Gilbert's conduct in this matter constituted a willful violation of Canons 2A and 3B(4) of the Texas Code of Judicial Conduct.

In condemnation of the conduct described above that violated Canons 2A and 3B(4) of the Texas Code of Judicial Conduct, it is the Commission's decision to issue a **PUBLIC ADMONITION** to the Honorable Allen Gilbert, Municipal Court Judge, San Angelo, Tom Green County, Texas.

Pursuant to the authority contained in Article V, § 1-a(8) of the Texas Constitution, it is ordered that the actions described above be made the subject of a **PUBLIC ADMONITION** by the Commission.

The Commission has taken this action in a continuing effort to protect public confidence in the judicial system and to assist the state's judiciary in its efforts to embody the principles and values set forth in the Texas Constitution and the Texas Code of Judicial Conduct.

Issued this __3rd__ day of ____April____, 2008.

ORIGINAL SIGNED BY

Honorable Sid Harle, Chair
State Commission on Judicial Conduct





**BEFORE THE
STATE COMMISSION ON JUDICIAL CONDUCT**

CJC No. 07-0501-JP

PUBLIC ADMONITION

**HONORABLE HECTOR LIENDO
JUSTICE OF THE PEACE, PRECINCT 1, PLACE 1
LAREDO, WEBB COUNTY, TEXAS**

During its meeting on December 12-14, 2007, the State Commission on Judicial Conduct concluded a review of allegations against the Honorable Hector Liendo, Justice of the Peace for Precinct 1, Place 1, in Laredo, Webb County, Texas. Judge Liendo was advised by letter of the Commission's concerns and provided a written response. After considering the evidence before it, the Commission entered the following Findings and Conclusion:

FINDINGS OF FACT

1. At all times relevant hereto, the Honorable Hector Liendo was Justice of the Peace for Precinct 1, Place 1, in Laredo, Webb County, Texas.
2. On or about September 2, 2006, at approximately 1:00 a.m., Judge Liendo was stopped by a Texas Department of Public Safety officer for driving in an erratic manner and over the speed limit.
3. During the traffic stop, Judge Liendo identified himself to the officer as being a judge and repeatedly referred to his official position in an effort to dissuade the officer from arresting him. At one point, Judge Liendo told the officer that he was "ruining" his career.
4. Judge Liendo was given a series of field sobriety tests, including a portable breath test, which registered the judge's immediate blood alcohol content at .18%, or more than twice the legal limit of .08%.
5. According to the arresting officer, Judge Liendo failed the field sobriety tests and refused to answer certain questions.

6. Judge Liendo later declined to provide a breath specimen which could be used as evidence in court resulting in his driver's license being suspended for 6 months.
7. In his response to the Commission's inquiry, Judge Liendo admitted that prior to the arrest, he had consumed four (4) beers at a LULAC function.
8. A few days after the incident, Judge Liendo issued a public apology for his behavior that night.
9. Judge Liendo accepted a pre-trial diversion program offered by the prosecutor, which included conditions that he perform community service and attend classes related to the dangers of driving while intoxicated.
10. Judge Liendo's September 2, 2006 arrest received local media attention.

RELEVANT STANDARDS

1. Article V, Section 1-a(6)A of the Texas Constitution provides that any Texas justice or judge may be disciplined for willful or persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or administration of justice.
2. Canon 2B of the Texas Code of Judicial Conduct states, in relevant part, that: "A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others."

CONCLUSION

The Commission concludes from the facts and evidence presented that Judge Liendo's conduct on the night of September 2, 2006, cast public discredit upon the judiciary and administration of justice in violation of Article V, Section 1-a(6)A of the Texas Constitution. The Commission further concludes that Judge Liendo's repeated attempts to use his position as judge in order to escape the consequences of his actions constituted willful and persistent violations of Canon 2B of the Texas Code of Judicial Conduct.

In condemnation of the conduct violative of Article V, Section 1-a(6)A of the Texas Constitution and Canon 2B of the Texas Code of Judicial Conduct recited above, it is the Commission's decision to issue a **PUBLIC ADMONITION** to the Honorable Hector Liendo, Justice of the Peace, Precinct 1, Place 1, Laredo, Webb County, Texas.

Pursuant to the authority contained in Article V, Section 1-a(8) of the Texas Constitution, it is ordered that the conduct described above be made the subject of a **PUBLIC ADMONITION** by the Texas State Commission on Judicial Conduct.

The Commission takes this action in a continuing effort to protect public confidence in the judicial system, and to assist the state judiciary in its efforts to embody

the principles and values set forth in the Texas Constitution and the Code of Judicial Conduct.

Issued this _7th_ day of _April_, 2008.

ORIGINAL SIGNED BY

Honorable Sid Harle, Chair
State Commission on Judicial Conduct



**BEFORE THE
STATE COMMISSION ON JUDICIAL CONDUCT**

CJC No. 08-0087-JP

PUBLIC ADMONITION

**HONORABLE FRED BROCKWELL
JUSTICE OF THE PEACE, PRECINCT 3
DEL RIO, VAL VERDE COUNTY, TEXAS**

During its meeting in Austin, Texas, on February 13-15, 2008, the State Commission on Judicial Conduct concluded a review of the allegations against the Honorable Fred Brockwell, Justice of the Peace, Precinct 3, Del Rio, Val Verde County, Texas. Judge Brockwell was advised by letter of the Commission's concerns and provided a written response. After considering the evidence before it, the Commission entered the following Findings and Conclusion:

FINDINGS OF FACT

1. At all times relevant hereto, the Honorable Fred Brockwell was Justice of the Peace for Precinct 3 in Del Rio, Val Verde County, Texas.

2. On or about July 19, 2006, the Commission ordered Judge Brockwell to obtain an additional twenty (20) hours of judicial education due to his failure to comply with that requirement for fiscal year 2005. Pursuant to the Commission's Order, the judge was to have completed the required education by December 31, 2006.
3. Prior to the December 31, 2006, deadline, Judge Brockwell requested and was granted an extension of time to obtain the ordered education.
4. In July of 2007, Judge Brockwell was contacted by the Commission regarding his failure to comply with the Order.
5. By letter dated July 13, 2007, Judge Brockwell acknowledged that he had only completed six (6) of the twenty (20) hours of judicial education required by the Commission's Order.
6. The judge's failure to comply was reported to the Commission in August of 2007.
7. In October of 2007, the Commission initiated a complaint against the judge for his failure to cooperate.
8. In his written response to the Commission's most recent inquiry, Judge Brockwell confirmed that despite the numerous extensions of time granted by the Commission he still had not completed the remaining fourteen (14) hours of judicial education pursuant to the Commission's July 2006 Order.
9. Judge Brockwell is in compliance with the required judicial education for fiscal years 2006 and 2007.

RELEVANT STANDARDS

1. Article V, Section 1-a(6)A of the Texas Constitution provides that any Texas judge may be disciplined for willful or persistent conduct that is clearly inconsistent with the proper performance of his duties.
2. Section 33.001(b)(5) of the Texas Government Code provides that a judge's failure to cooperate with the Commission constitutes "willful or persistent conduct that is clearly inconsistent with the proper performance of a judge's duties."
3. Canon 2A of the Texas Code of Judicial Conduct states, in pertinent part: "A judge shall comply with the law. . . ."

CONCLUSION

The Commission concludes from the facts and evidence presented that Judge Brockwell willfully and persistently failed to comply with the Commission's July 2006 Order by not obtaining the remaining fourteen (14) hours of judicial education that he had missed in fiscal year 2005. The judge's conduct in this matter constituted willful and persistent violations of Canon 2A, Article V, Section 1-a(6)A of the Texas Constitution, and Section 33.001(b)(5) of the Texas Government Code.

In condemnation of the above-recited conduct that violated Canon 2A of the Texas Code of Judicial Conduct, Article V, Section 1-a(6)A of the Texas Constitution and Section 33.001(b)(5) of the Texas Government Code, it is the Commission's decision to issue a **PUBLIC ADMONITION** to the Honorable Fred Brockwell, Justice of the Peace, Precinct 3, Del Rio, Val Verde County, Texas.

Pursuant to the authority contained in Article V, Section 1-a(8) of the Texas Constitution, it is ordered that the actions described above be made the subject of a **PUBLIC ADMONITION** by the Commission.

The Commission has taken this action in a continuing effort to protect public confidence in the judicial system and to assist the state's judiciary in its efforts to embody the principles and values set forth in the Texas Constitution and the Texas Code of Judicial Conduct.

Issued this the __7th__ day of __April__, 2008.

ORIGINAL SIGNED BY

Honorable Sid Harle, Chair
State Commission on Judicial Conduct





**BEFORE THE
STATE COMMISSION ON JUDICIAL CONDUCT**

CJC No. 07-0384-JP

PUBLIC ADMONITION

**HONORABLE GARY GEICK
JUSTICE OF THE PEACE, PRECINCT 1, PLACE 2
ROSENBERG, FORT BEND COUNTY, TEXAS**

During its meeting on April 16-18, 2008, the State Commission on Judicial Conduct concluded a review of allegations against the Honorable Gary Geick, Justice of the Peace for Precinct 1, Place 2, in Rosenberg, Fort Bend County, Texas. Judge Geick was advised by letter of the Commission's concerns and provided a written response. Judge Geick was invited to appear before the Commission to give testimony, but declined to appear. In lieu of an appearance, Judge Geick filed supplemental information for the Commission's consideration. After considering the evidence before it, the Commission entered the following Findings and Conclusions:

FINDINGS OF FACT

1. At all times relevant hereto, the Honorable Gary Geick was Justice of the Peace for Precinct 1, Place 2, in Rosenberg, Fort Bend County, Texas.
2. On or about December 18, 2006, William Fuller ("Fuller") attempted to file a forcible detainer ("eviction") case in Judge Geick's court, but was advised by the judge's staff that Judge Geick had a policy of not accepting eviction filings during the latter part of the month of December.
3. Judge Geick's staff advised Fuller that he could file his eviction action in the other justice of the peace court in the precinct or, alternatively, return on January 2, 2007, when Judge Geick's court would resume accepting eviction filings.
4. In his response to the Commission's inquiry, Judge Geick acknowledged that in the past, he did not accept eviction filings during the latter part of the month of December, and had not done so since he first took the bench approximately twenty years ago.

5. Judge Geick explained that he refused to accept eviction filings during late December because he did not want to “kick someone out of their home at Christmas.”
6. Judge Geick further explained that he routinely takes a vacation during part of the month of December, and he believed that if he accepted eviction filings prior to his vacation, he would not be able to dispose of them in a timely manner.
7. Judge Geick stated that he and his staff would therefore meet on an annual basis to determine the last date on which they would accept eviction filings in December, and the first date on which they would resume accepting such filings upon the judge’s return from his vacation.
8. According to Judge Geick, he instructed his court staff to advise landlords wishing to file eviction cases during this period to file in the other justice of the peace court in the precinct or, alternatively, wait until his court began accepting filings again in January.
9. Judge Geick stated that his court staff only refused to accept eviction filings during this period, and would accept all other filings from litigants during this time.
10. After Fuller reported his concerns about the judge’s refusal to accept eviction filings in December to a reporter for the *Fort Bend/Southwest Star*, Judge Geick made statements to the local media defending his practice, declaring that for the last twenty years he had not accepted eviction filings when “it gets close to Christmas,” and that “[n]o matter what,” he did not intend to do so for the next four years of his term of office.
11. Judge Geick concluded his statements to the media by noting that he had surveyed “86 defendants waiting for their cases to be heard” in his court and that all of them supported his position, and that he believed “most people will support my position.”
12. Judge Geick advised the Commission that he now realizes that his practice was not authorized by law, and he has therefore instructed his staff to accept all evictions cases from landlords regardless of the date on which they are filed.

RELEVANT STANDARDS

1. Canon 2A of the Texas Code of Judicial Conduct states, in pertinent part: “A judge shall comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.”
2. Canon 3B(1) of the Texas Code of Judicial Conduct states: “A judge shall hear and decide matters assigned to the judge except those in which disqualification is required or recusal is appropriate.”
3. Canon 3B(2) of the Texas Code of Judicial Conduct states, in pertinent part: “A judge should be faithful to the law and shall maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.”

CONCLUSION

The Commission concludes based on the facts and evidence before it that Judge Geick failed to comply with the law and demonstrated a lack of professional competence in the law by engaging in a twenty-year long practice of refusing to accept eviction filings from landlords for part of the month of December. Although Judge Geick may have had good intentions for creating this policy, the Commission found no statutory or other legal authority that would allow a judge to simply refuse to accept cases for filing over which his court has jurisdiction and venue. Moreover, such a policy is unwarranted given that the law provides several options that Judge Geick could utilize when he is absent from the court for extended periods of time, such as requesting that the county appoint a qualified temporary justice to hear the judge's cases in his absence, or arranging to transfer cases to another justice court or to have another justice in his precinct or county preside over hearings in his court. Public confidence in the independence, impartiality, and integrity of the judiciary demands that every judge uphold the laws of this State. Allowing public clamor or a fear of criticism to influence, or appear to influence, a judge to adopt or enforce a policy or practice that is not otherwise sanctioned by law undermines the public's trust and confidence in our judiciary. In light of this, the Commission finds that Judge Geick's conduct in this matter constituted willful and persistent violations of Canons 2A, 3B(1) and 3B(2) of the Texas Code of Judicial Conduct.

In condemnation of the conduct described above that violated Canons 2A, 3B(1) and 3B(2) of the Texas Code of Judicial Conduct, it is the Commission's decision to issue a **PUBLIC ADMONITION** to the Honorable Gary Geick, Justice of the Peace for Precinct 1, Place 2, in Rosenberg, Fort Bend County, Texas.

Pursuant to the authority contained in Article V, § 1-a(8) of the Texas Constitution, it is ordered that the actions described above be made the subject of a **PUBLIC ADMONITION** by the Commission.

The Commission has taken this action in a continuing effort to protect public confidence in the judicial system and to assist the state's judiciary in its efforts to embody the principles and values set forth in the Texas Constitution and the Texas Code of Judicial Conduct.

Issued this **5th** day of **May, 2008**.

ORIGINAL SIGNED BY

Honorable Sid Harle, Chair
State Commission on Judicial Conduct



**BEFORE THE
STATE COMMISSION ON JUDICIAL CONDUCT**

CJC No. 07-0716-DI

**PUBLIC WARNING
AND
ORDER OF ADDITIONAL EDUCATION**

**HONORABLE HAL MINER
47TH JUDICIAL DISTRICT COURT JUDGE*
AMARILLO, POTTER COUNTY, TEXAS**

During its meeting on April 16-18, 2008, the State Commission on Judicial Conduct concluded a review of allegations against the Honorable Hal Miner, Judge of the 47th Judicial District Court, in Amarillo, Potter County, Texas. Judge Miner was advised by letter of the Commission's concerns and provided a written response. Judge Miner appeared before the Commission, with counsel, on April 18, 2008, and gave testimony. After considering the evidence before it, the Commission entered the following Findings and Conclusion:

FINDINGS OF FACT

1. At all times relevant hereto, the Honorable Hal Miner was Judge of the 47th Judicial District Court in Amarillo, Potter County, Texas.
2. On or about December 14, 2006, Judge Miner attended a Christmas party hosted by a local law firm.
3. Guests at the annual party included law enforcement officers, court staff, probation department employees, attorneys, and other judges.
4. According to at least two witnesses, soon after arriving at the party, Judge Miner approached a female attorney and "slapped" her buttocks.

* The 47th Judicial District Court covers Potter, Randall and Armstrong Counties.

5. The judge approached the attorney a second time, where his hand made contact with her buttocks again.
6. According to one of the witnesses, the judge also joked about the attorney's height, commenting to the effect that he had intended to slap her on her back, but her "ass" was at hand level.
7. When asked to either verify or refute the testimony concerning his comments to the attorney, Judge Miner told the Commission that he could not recall if he had made those remarks.
8. Both witnesses stated that they were dismayed, surprised, and disappointed by the judge's conduct, which they observed to have been clearly unwelcome by the attorney at the time.
9. At least one of the witnesses stated that he discussed the incident with other guests at the party and with his colleagues at work the following day.
10. Although Judge Miner was unable to recall the specifics of the incident in question, he did acknowledge in his written and oral testimony before the Commission that "[the allegations] are basically true except that I did not think it would be offensive to her."
11. Judge Miner described his actions as being "spontaneous" and "directed at a person that I have the highest professional and personal respect for."
12. Judge Miner explained that the attorney in question regularly appears before him and used to serve as a prosecutor assigned to his court.
13. The attorney, who did not file the complaint against the judge and was unhappy that one was filed, informed the Commission that she had met with Judge Miner privately to express her feelings about the incident, and now "considers the matter closed."
14. In a subsequent statement provided to the Commission, the attorney testified that she could understand why those who observed the judge touching her buttocks at the party might "misinterpret the contact" and be offended.
15. The attorney went on to defend Judge Miner by stating that she herself was not offended by his conduct "because of who I am and how I handle myself," and because of her long-term professional relationship with the judge.

RELEVANT STANDARD

1. Article V, §1-a(6)A of the Texas Constitution states that a judge may be disciplined or removed from office for a willful violation of the Texas Code of Judicial Conduct, or for willful or persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or administration of justice.

CONCLUSION

The Commission concludes based on the facts and evidence before it that Judge Miner's undignified and offensive behavior at the Christmas party brought public discredit upon the judiciary. Although Judge Miner stated that he did not believe the

attorney would be offended when he touched her buttocks in front of their colleagues and other guests attending the party, and despite the attorney's later protestations that she was not offended by the judge's conduct, those individuals who witnessed the intimate contact between a judicial officer and a female attorney who regularly practices before his court found the conduct to be embarrassing and improper, and discussed the unpleasant incident with other members of the legal community in the days and weeks following the party. The Commission concludes, therefore, that Judge Miner's actions in this matter constituted a willful or persistent violation of Article V, §1-a(6)A of the Texas Constitution.

In condemnation of the conduct described above that violated Article V, §1-a(6)A of the Texas Constitution, it is the Commission's decision to issue a **PUBLIC WARNING AND ORDER OF ADDITIONAL EDUCATION** to the Honorable Hal Miner, Judge of the 47th Judicial District Court, Amarillo, Potter County, Texas.

Pursuant to this Order, Judge Miner must complete an **eight (8) hour** course covering the topics of gender sensitivity and sexual harassment, which course shall be approved in advance by the Commission. Such instruction shall be in addition to the judge's required judicial education for the fiscal year.

Judge Miner is hereby directed to complete the additional education recited above within **one hundred and twenty (120) days** from the date of this Order. It is Judge Miner's responsibility to schedule and complete the additional education, at his own expense, and to provide proof of completion, along with the Respondent Judge Survey, to the Commission within **ten (10) days** following the conclusion of the training.

Failure to complete the required additional education in a timely manner may result in further Commission action.

Pursuant to the authority contained in Article V, § 1-a(8) of the Texas Constitution, it is ordered that the conduct described above be made the subject of a **PUBLIC WARNING AND ORDER OF ADDITIONAL EDUCATION** by the State Commission on Judicial Conduct.

The Commission takes this action in a continuing effort to protect public confidence in the judicial system, and to assist the state judiciary in its efforts to embody the principles and values set forth in the Texas Constitution and the Code of Judicial Conduct.

Issued this **14th** day of **May, 2008**.

ORIGINAL SIGNED BY

Honorable Sid Harle, Chair
State Commission on Judicial Conduct



**BEFORE THE
STATE COMMISSION ON JUDICIAL CONDUCT**

CJC No. 07-0668-CC

**PUBLIC WARNING
AND
ORDER OF ADDITIONAL EDUCATION**

**HONORABLE BRENT KEIS
COUNTY COURT AT LAW No. 1
FORT WORTH, TARRANT COUNTY, TEXAS**

During its meeting on April 16-18, 2008, the State Commission on Judicial Conduct concluded a review of allegations against the Honorable Brent Keis, County Court at Law No. 1, in Fort Worth, Tarrant County, Texas. Judge Keis was advised by letter of the Commission's concerns and provided a written response. Judge Keis appeared before the Commission, with counsel, on April 16, 2008, and gave testimony. After considering the evidence before it, the Commission entered the following Findings and Conclusion:

FINDINGS OF FACT

1. At all times relevant hereto, the Honorable Brent Keis was Judge of the County Court at Law No. 1, in Fort Worth, Tarrant County, Texas.
2. On or about April 16, 2007, Nuru Witherspoon ("Witherspoon"), an African-American attorney from Dallas, appeared in Judge Keis's court with his clients, David and Toni Goodman, who were the plaintiffs in a personal injury action being defended by State Farm Insurance Company.
3. After Witherspoon approached the bench and introduced himself, Judge Keis inquired as to the correct pronunciation and origin of Witherspoon's first name.

4. Witherspoon advised the Judge that his first name, Nuru, was of African origin, but that he was from Georgia.
5. This information caused Judge Keis to attempt to engage Witherspoon in a conversation about the transportation of enslaved Africans to the Americas in what is referred to as the “Middle Passage.”
6. Judge Keis also explained the theory held by some that the Middle Passage experience had the effect of causing the death of Africans unable to cope with the hardships of the voyage and leaving only the stronger, more capable Africans surviving, the resulting effect being the athletic superiority of many of today’s African-Americans.
7. Witherspoon did not engage in the Judge’s discussion of the Middle Passage or any other subject.
8. Following his failed attempt to engage Witherspoon in a conversation about slavery, Judge Keis proceeded to review photographs of the automobile involved in the case, observing that there appeared to be very little physical damage to the Goodmans’ vehicle.
9. Judge Keis inquired about the injuries suffered by Toni Goodman and learned that there appeared to be no objective medical evidence of injury, meaning that the injury was what is commonly referred to as a “soft tissue” injury.
10. This type of “soft tissue” injury case is known in Tarrant County as a “MIST” case (Motor vehicle Incident Soft Tissue injury).
11. Learning of the amount of money being offered to the plaintiff by State Farm, Judge Keis told Witherspoon that he considered the offer to be very good in light of the lack of damage to the automobile and the soft tissue type of injury suffered by Mrs. Goodman.
12. Thereafter, the parties entered into settlement negotiations.
13. When the negotiations appeared to be at an impasse, Judge Keis delivered what he refers to as his standard “MIST” talk.
14. According to Judge Keis, the “MIST” talk is an explanation to litigants of the risks associated with submitting “MIST” cases to a jury in Tarrant County. Its purpose is to encourage a careful and thoughtful settlement discussion between the parties in light of the facts of the case and the history of jury trial verdicts observed by Judge Keis during his tenure on the bench in Tarrant County.
15. As part of the “MIST” talk, Judge Keis explained to Witherspoon and his clients the relative effectiveness of verbal, visual and documentary evidence in jury trials and the history of awards by Tarrant County juries in cases similar to theirs.
16. Judge Keis went on to explain that he was a Republican, and that juries in Tarrant County are predominantly made up of Republicans.
17. Using a gambling analogy relating to the spin of a roulette wheel, Judge Keis concluded his “MIST” talk by telling Mrs. Goodman that if she wanted to “bet on black,” she could proceed to trial.
18. Neither the attorney for State Farm nor Witherspoon requested that Judge Keis give the “MIST” talk.

19. Although Witherspoon had requested the trial setting and had announced ready for trial that morning, there were certain evidentiary and procedural challenges that first needed to be resolved, including Witherspoon's late filing of medical records affidavits and the apparent absence of a witness list identifying medical professionals who would be called to testify on his clients' behalf.
20. There is no evidence before the Commission as to whether or not the Goodmans were aware of any procedural or evidentiary issues potentially jeopardizing their case.
21. After Judge Keis's failed attempt to engage Witherspoon in a discussion about slavery and the Middle Passage, and the Judge's "MIST" talk, the Goodmans opted to settle with State Farm rather than go to trial.
22. At the time, Witherspoon expressed no objection to or concern about the Judge's discussions of slavery, the Middle Passage, or the "MIST" talk.
23. However, in a videotaped statement obtained by the Commission on March 11, 2008, in lieu of his appearance before the Commission, Witherspoon testified that although he did not express it at the time, he nevertheless found it shocking when Judge Keis, whom he had never met before, attempted to discuss the Middle Passage and theories about the slave trade with him prior to the commencement of trial.
24. Witherspoon went on to explain that even though his instinct was to "get out of here," the reason he took no action against Judge Keis at the time was because he was more focused on his clients interests than his own feelings about the Judge's comments. However, after describing the incident to his colleagues in the legal community, Witherspoon eventually filed a complaint against Judge Keis with the Commission.
25. Judge Keis soon became the subject of widespread negative media attention and public criticism over this event after a fellow lawyer and friend of Witherspoon sent a copy of Witherspoon's complaint to the local media.
26. In a statement to the media, Witherspoon remarked that it would be a "stretch" to describe Judge Keis's discussion about slavery, the Middle Passage and theories about the effect of that event on African-American athletes, as being "racist."
27. Witherspoon went on to state that while he had developed a thick skin over the years and did not consider himself to be overly sensitive, his clients were the ones offended by the judge's comments and who felt they were not going to get a fair trial in front of this judge.
28. David Goodman also spoke to the media, describing that he and his wife felt they had been forced to settle by "a hostile court situation." In an affidavit submitted to the Commission on March 12, 2008, Mr. Goodman reiterated his belief that the judge, through his comments to Witherspoon and the "MIST" talk, had improperly forced them into settling for far less than what they were entitled to receive.
29. Following the media reports, Judge Keis recused himself from the Goodmans' case, as well as from all cases involving Witherspoon's firm.

30. In his written and live testimony before the Commission, Judge Keis acknowledged that he did discuss the Middle Passage with Witherspoon, but explained that he did so in an effort to make Witherspoon, an out-of-town lawyer, feel comfortable and relaxed in the Judge's courtroom.
31. Having learned that the origin of Witherspoon's first name was of African origin, Judge Keis explained that he believed a conversation about the historical events of the slave trade and the Middle Passage might be of interest to Witherspoon and would encourage the out-of-town attorney to talk about himself, his interests and his case.
32. Describing his comments to Witherspoon as a "welcoming, friendly conversation with counsel," Judge Keis elaborated by stating that when attorneys are appearing in his court for the first time, he devotes a great deal of time and effort to make them feel comfortable and to allay any fears of being "hometowned."
33. According to Judge Keis, in his opinion, the statements he made were not "racist, biased, insensitive, inappropriate, undignified, discourteous, [or] absurd," nor did they "creat[e] an environment that was hostile to the plaintiffs or their counsel."
34. In support of his testimony before the Commission, Judge Keis provided copies of affidavits, letters and emails from several attorneys who regularly practiced in his court, all of whom extolled the Judge's moral character, judicial demeanor, reputation for fairness, the manner in which the "MIST" talk is given, and the benefits of the "MIST" talk.
35. The Commission also received an unsolicited letter of support for the Judge from a local attorney who explained that in his experiences practicing before Judge Keis, he has never seen the Judge exhibit racist behavior.
36. Several local attorneys also appeared before the Commission on behalf of Judge Keis to praise the Judge's judicial demeanor and his reputation for fairness.
37. At the conclusion of the videotaped statement presented to the Commission in lieu of his appearance, Witherspoon described how such comments from a judge in the courtroom might have a "chilling effect" on the litigants, creating "this sense that you can't get a fair shot when you walk into the courtroom," and leaving one with the perception that the judge has already made up his mind before the case has been presented.

RELEVANT STANDARDS

1. Article V, §1-a(6)A of the Texas Constitution states that a judge may be disciplined or removed from office for willful or persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or administration of justice.
2. Canon 3B(5) of the Texas Code of Judicial Conduct states: "A judge shall perform judicial duties without bias or prejudice."
3. Canon 3B(6) of the Texas Code of Judicial Conduct states: "A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex,

religion, national origin, disability, age, sexual orientation or socioeconomic status...”

4. Canon 3B(8) of the Texas Code of Judicial Conduct states, in pertinent part: “A judge shall accord to every person who has a legal interest in a proceeding, or that person’s lawyer, the right to be heard according to law.”

CONCLUSION

The Commission concludes based on the facts and evidence before it that Judge Keis made an inartful and insensitive attempt to engage Witherspoon in a discussion about slavery, the Middle Passage, and the possible effect of that event on today’s African-Americans. Because the incident did receive widespread media attention, some members of the public reached the conclusion, perhaps mistaken, that the judge harbored a bias or prejudice against Witherspoon on the basis of the attorney’s race. Although Judge Keis insists that he did not intend his comments to be racially insensitive or offensive, it is clear that his remarks were inappropriate in the setting in which they occurred, and that they could easily be misinterpreted by anyone unfamiliar with the Judge.

The Commission notes that many members of the Tarrant County legal community have come out in support of Judge Keis and his use of the “MIST” talk as an admirable way to encourage both parties to engage in meaningful settlement discussions. While the “MIST” talk may be an effective case management tool, the Commission finds that the judge’s unsolicited discussion of the facts, evidence, and apparent value of the Goodmans’ case in an effort to “encourage settlement” created, in the minds of the Goodmans, an atmosphere that was coercive and intimidating. Moreover, by injecting both race and politics into the case, Judge Keis created a legitimate concern in the minds of the Goodmans and their attorney about the impartiality of the court regarding the merits of their case. When taken together, the “MIST” talk and the judge’s earlier remarks to Witherspoon about slavery and the Middle Passage had a chilling effect on the efforts of Witherspoon and his clients to have their case determined on its own merits. In the end, regardless of the perceived strengths or weaknesses of the Goodmans’ case, Witherspoon and his clients were entitled to an impartial judge and Judge Keis had a duty to afford them “the right to be heard according to law.” The Commission finds that Judge Keis’s actions in this matter violated Canons 3B(5), 3B(6), and 3B(8) of the Texas Code of Judicial Conduct, and Article V, §1-a(6)A of the Texas Constitution.

The Commission notes that the character references provided by Judge Keis in support of his defense to the allegations have been taken into account in determining the appropriate discipline to impose in this case.

In condemnation of the conduct described above that violated Canons 3B(5), 3B(6), and 3B(8) of the Texas Code of Judicial Conduct, and Article V, §1-a(6)A of the Texas Constitution, it is the Commission’s decision to issue a **PUBLIC WARNING AND ORDER OF ADDITIONAL EDUCATION** to the Honorable Brent Keis, County Court at Law No. 1, Fort Worth, Tarrant County, Texas.

Pursuant to this Order, Judge Keis must complete an **eight (8) hour** course covering the topics of racial sensitivity and diversity, including the perceptions of

litigants and their counsel regarding comments made by and with the apparent authority of a Trial Judge. Such course shall be approved in advance by the Commission and shall be in addition to the judge's required judicial education for the fiscal year.

Judge Keis is hereby directed to complete the additional education recited above within **one hundred and twenty (120) days** from the date of this Order. It is Judge Keis's responsibility to schedule and complete the additional education, at his own expense, and to provide proof of completion, along with the Respondent Judge Survey, to the Commission within **ten (10) days** following the conclusion of the training.

Failure to complete the required additional education in a timely manner may result in further Commission action.

Pursuant to the authority contained in Article V, Section 1-a(8) of the Texas Constitution, it is ordered that the conduct described above be made the subject of a **PUBLIC WARNING AND ORDER OF ADDITIONAL EDUCATION** by the State Commission on Judicial Conduct.

The Commission has taken this action in a continuing effort to protect public confidence in the judicial system and to assist the state's judiciary in its efforts to embody the principles and values set forth in the Texas Constitution and the Texas Code of Judicial Conduct.

Issued this **14th** day of **May, 2008**.

ORIGINAL SIGNED BY

Honorable Sid Harle, Chair
State Commission on Judicial Conduct



**BEFORE THE
STATE COMMISSION ON JUDICIAL CONDUCT**

CJC No. 07-0455-MU

**PUBLIC ADMONITION
AND
ORDER OF ADDITIONAL EDUCATION**

**HONORABLE LYNDA LAWLESS
MUNICIPAL COURT JUDGE
MARLIN, FALLS COUNTY, TEXAS**

During its regularly scheduled meeting on June 18-20, 2008, the State Commission on Judicial Conduct concluded a review of allegations against the Honorable Lynda Lawless, Municipal Court Judge for the City of Marlin, Falls County, Texas. Judge Lawless was advised by letter of the Commission's concerns and provided a written response. Judge Lawless appeared with counsel before the Commission on June 20, 2008, and gave testimony. After considering the evidence before it, the Commission entered the following Findings and Conclusions:

FINDINGS OF FACT

1. At all times relevant hereto, the Honorable Lynda Lawless was Municipal Court Judge for the City of Marlin, Falls County, Texas.
2. Court records show that on January 31, 2006, Joan Barganier had numerous citations pending against her, including a speeding citation issued in June 2005, and citations for failure to vaccinate her dogs and for allowing her dogs to run "at large," issued in December 2005.
3. Although Barganier had been notified by the animal control officer to appear in municipal court on January 31, 2006, to answer the charges relating to her dogs, she failed to appear in court on that date.
4. On or about January 31, 2006, without a prosecutor present, Judge Lawless questioned several witnesses concerning the citations issued to Barganier

- regarding her dogs. The judge reviewed the evidence presented by the witnesses and discussed possible courses of action, including removing the “wild dogs” from the property and euthanizing them.
5. At the conclusion of this proceeding, although no judgment had been entered against the defendant, Judge Lawless issued *capias pro fine* warrants for Barganier’s arrest on the speeding citation and for her failure to appear on that charge.
 6. Judge Lawless also issued a seizure order for Barganier’s dogs, which included an order requiring Barganier to appear for a hearing on February 7, 2006.
 7. On February 2, 2006, Judge Lawless issued arrest warrants against Barganier for the outstanding citations relating to her failure to vaccinate her dogs and for her failure to appear on those charges.
 8. None of the warrants was served on Barganier.
 9. On February 7th, Barganier appeared in Judge Lawless’ court.
 10. Those present at the February 7th hearing included the chief of police, the court clerk, and the animal control officer, who had provided the probable cause affidavit for the warrants issued against Barganier.
 11. As was the case on January 31st, no prosecutor was present for the proceedings.
 12. Because Judge Lawless was home due to illness, the court clerk contacted the judge by telephone to set up a telephonic hearing.
 13. The animal control officer went to Judge Lawless’ home to deliver copies of the paperwork relating to the cases.
 14. The court clerk then handed the police chief the warrants previously issued against Barganier, and instructed the officer to execute the warrants and take Barganier to jail if she did not pay the fines and enter a plea of guilty in all of the cases.
 15. No written plea regarding any of the outstanding citations against Barganier was found in the court’s files; however, Barganier testified that she informed the judge over the telephone that she was not guilty, and that she wanted a jury trial, a copy of all the complaints and evidence being used against her, and an opportunity to question the witnesses.
 16. According to Barganier, these requests were ignored by the judge.
 17. While on the telephone with Judge Lawless, Barganier was questioned by the animal control officer as to her ownership and care of the dogs in question. Thereafter, Barganier was instructed that if she did not promptly remove the dogs from the property and if she permitted the dogs to continue to live on the property, they would be seized and destroyed by the animal control officer.
 18. According to Barganier, she was led to believe from the proceedings that her only recourse was to pay the accumulated fines in the total amount of \$5,160.00, or be taken to jail.
 19. Faced with no other options, Barganier paid all of the fines to avoid arrest and jail.

20. Judge Lawless acknowledged that no written judgment was signed or noted on the docket in these cases. The only record that the cases had been disposed was the receipt given to Barganier for payment of the fines.

RELEVANT STANDARDS

1. Canon 2A of the Texas Code of Judicial Conduct states: “A judge shall comply with the law”
2. Canon 3B(2) of the Texas Code of Judicial Conduct states, in pertinent part: “A judge . . . shall maintain professional competence in [the law].”
3. Canon 6C(2) of the Texas Code of Judicial Conduct states, in pertinent part: “A justice of the peace or municipal court judge, except as authorized by law, shall not directly or indirectly initiate, permit, nor consider *ex parte* or other communications concerning the merits of a pending judicial proceeding.”

CONCLUSION

The Commission concludes based on the facts and evidence before it that Judge Lawless failed to comply with the law and demonstrated a fundamental lack of professional competence in the law by, and not limited to: (a) conducting the January 31, 2006, proceeding without a prosecutor; (b) conducting the February 7th proceeding over the telephone and without a prosecutor; (c) discussing the merits of cases with complaining witnesses outside the presence of the defendant and/or a prosecutor; (d) issuing *capias pro fine* warrants without a judgment against the defendant; (e) coercing the defendant to pay all fines instantaneously with the threat of arrest and jail for entering a plea of not guilty; (f) failing to announce or render her judgments in open court; and (g) failing to reduce her judgments to writing. Judge Lawless’ actions in this matter constituted willful or persistent violations of Canons 2A, 3B(2), and 6C(2) of the Texas Code of Judicial Conduct.

In condemnation of the conduct described above that violated Canons 2A, 3B(2) and 6C(2) of the Texas Code of Judicial Conduct, it is the Commission’s decision to issue a **PUBLIC ADMONITION AND ORDER OF ADDITIONAL EDUCATION** to the Honorable Lynda Lawless, Municipal Court Judge, in Marlin, Falls County, Texas.

Pursuant to the order, Judge Lawless must obtain **four (4) hours** of instruction with a mentor in addition to her required judicial education. In particular, the Commission directs that Judge Lawless receive instruction in the following areas: appearance bonds, warrants, class C misdemeanor pre-trial and trial procedures, and record-keeping.

Judge Lawless shall complete the additional **four (4) hours** of instruction recited above within **ninety (90) days** from the date of written notification of the assignment of a mentor. It is Judge Lawless’ responsibility to contact the assigned mentor and schedule the additional education.

Upon the completion of the **four (4) hours** of instruction described herein, Judge Lawless shall sign and return the Respondent Judge Survey indicating compliance with this Order. Failure to complete, or report the completion of, the required additional education in a timely manner may result in further Commission action.

Pursuant to the authority contained in Article V, §1-a(8) of the Texas Constitution, it is ordered that the actions described above be made the subject of a **PUBLIC ADMONITION AND ORDER OF ADDITIONAL EDUCATION** by the Commission.

The Commission has taken this action with the intent of assisting Judge Lawless in her continued judicial service, as well as in a continuing effort to protect public confidence in the judicial system and to assist the state's judiciary in its efforts to embody the principles and values set forth in the Texas Constitution and the Texas Code of Judicial Conduct.

Issued this **1st** day of **July**, 2008.

ORIGINAL SIGNED BY

Honorable Sid Harle, Chair
State Commission on Judicial Conduct



**BEFORE THE
STATE COMMISSION ON JUDICIAL CONDUCT**

CJC No. 08-0073-MU

PUBLIC WARNING

**HONORABLE HECTOR DE PENA, JR.
ASSOCIATE MUNICIPAL JUDGE
CORPUS CHRISTI, NUECES COUNTY, TEXAS**

During its meeting on August 13-15, 2008, the State Commission on Judicial Conduct concluded a review of allegations against the Honorable Hector De Pena, Jr., Associate Municipal Court Judge, Corpus Christi, Nueces County, Texas. Judge De Pena was advised by letter of the Commission's concerns and provided a written response. By letter dated July 8, 2008, Judge De Pena was offered an opportunity to appear before the Commission, but declined to respond to the Commission's invitation. After considering the evidence before it, the Commission entered the following Findings and Conclusion:

FINDINGS OF FACT

1. At all times relevant hereto, the Honorable Hector De Pena, Jr., was Associate Municipal Court Judge for the City of Corpus Christi, Nueces County, Texas.
2. According to a complaint filed by the city attorney, several female detention officers claimed that at various times in 2007, Judge De Pena had made sexually inappropriate comments to them, or made unwanted physical contact with them.
3. According to the women, the alleged conduct took place at various locations, and was directed to the women individually.
4. The city's human resources officer interviewed the women and other witnesses, and compiled a report dated September 10, 2007.
5. According to the affidavit of the primary complainant, a detention officer, on February 14, 2007, Judge De Pena asked her about her marital status, and then suggested that the two of them "run away."

6. The detention officer also stated that Judge De Pena occasionally hugged her and rubbed her shoulders, without her consent, and would refer to her as “sweetheart, darling or gorgeous.”
7. The complainant further stated that Judge De Pena once forcibly kissed her in the hallway of the detention center, without her consent.
8. She stated that on another occasion Judge De Pena approached her at work and commented that he was there “to sexually harass” her, and then began to massage her shoulders, without her consent.
9. Finally, the woman stated that on or about August 17th or 18th, 2007, Judge De Pena made unwanted contact with her by touching her back and waist while telling her: “Just remember, I love you.”
10. A second officer stated in her affidavit that Judge De Pena would sometimes refer to her as “sweetheart, darling or gorgeous.”
11. This officer said that the judge would occasionally touch or hug her, without her consent, and that in July 2007, he touched her right breast while attempting to hug her without her consent.
12. A third officer stated in her affidavit that Judge De Pena once kissed her on the forehead, without her consent, and that he would refer to her as “darling” and “sweetie.”
13. The fourth officer stated in her affidavit that in June 2007, Judge De Pena greeted her by saying “Hey Sexy.” This officer also stated that Judge De Pena would occasionally rub her shoulders, and that he once kissed her on the cheek; however the officer said that she did not find the judge’s behavior to be offensive or threatening.
14. In his written responses to the Commission’s inquiry, Judge De Pena admitted that he “probably did” call one of the officers by “pet names” and that he “probably did ...rub her shoulder” occasionally. He also acknowledged that he referred to another female officer as “sexy” on one occasion “when she came to work well dressed and manicured.”
15. The Commission was advised by city officials that in February 2005, a similar complaint had been made against Judge De Pena by a court administrative assistant, for which the judge had received a warning.
16. The City of Corpus Christi’s written policy issued to all city employees “prohibits sexual harassment at all levels of City employment.” According to that policy, “Sexual Harassment” is defined, in part, as “unwelcome sexual advances ... and other verbal or physical conduct of a sexual nature” The policy defines “unwelcome sexual advances,” in part, as “verbal or physical conduct of a sexually offensive nature” including “unwelcome sexual flirtations, advances ... uninvited and unwelcome physical contact or touching, including ... hugging”

RELEVANT STANDARDS

1. Canon 3B(4) of the Texas Code of Judicial Conduct states, in pertinent part, “A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity . . .”
2. Article V, §1-a(6)A of the Texas Constitution states that a judge may be disciplined or removed from office for a willful violation of the Texas Code of Judicial Conduct, or for willful or persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or administration of justice.

CONCLUSION

Based on the facts and evidence before it, the Commission concludes that as a public official charged with upholding the honor and integrity of the judiciary, Judge De Pena’s conduct toward certain female detention officers with whom he worked in his official capacity lacked the dignity and courtesy required of a judicial official and was clearly inconsistent with the proper performance of his duties. Judge De Pena’s inappropriate behavior towards these women constituted willful and/or persistent violations of Canon 3B(4) of the Texas Code of Judicial Conduct, and Article V, Section 1-a(6)A of the Texas Constitution.

In condemnation of the conduct which violates Canon 3B(4) and Article V, §1-a(6)A of the Texas Constitution recited above, it is the Commission’s decision to issue a **PUBLIC WARNING** to Judge Hector De Pena, Jr., Associate Municipal Judge, City of Corpus Christi, Nueces County, Texas.

Pursuant to the authority contained in Article V, Section 1-a(8) of the Texas Constitution, it is ordered that the conduct described above is made the subject of a **PUBLIC WARNING** by the State Commission on Judicial Conduct.

The Commission has taken this action in a continuing effort to protect public confidence in the judicial system and to assist the state’s judiciary in its efforts to embody the principles and values set forth in the Texas Constitution and the Texas Code of Judicial Conduct.

Issued this **29th** day of **August**, 2008.

ORIGINAL SIGNED BY

Honorable Sid Harle, Chair
State Commission on Judicial Conduct